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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/760,377	01/12/2001	Robert E. Dvorak	BLFR 1003-1	1255
22470	7590	10/12/2005	EXAMINER	
HAYNES BEFFEL & WOLFELD LLP P O BOX 366 HALF MOON BAY, CA 94019			VAN DOREN, BETH	
			ART UNIT	PAPER NUMBER
			3623	

DATE MAILED: 10/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/760,377	DVORAK ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Beth Van Doren	3623	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 27 July 2005.

2a) This action is FINAL.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-95 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-95 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 20050316.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

1. The following is a non-final response to communications received 07/27/05. Claim 1 has been amended. Claims 1-95 are pending in this application.

### ***Response to Arguments***

2. Applicant's arguments with regards to the 35 USC § 102(e) rejections based on Landvater (U.S. 6,609,101) have been fully considered, but they are not persuasive. In the remarks, Applicant argues that Landvater does not teach or suggest (1) a causal calendar adapted to a variety of event types, (2) the term or concept of open to buy reports, (3) group and selling location identifying attributes on a causal calendar, (4) a factor corresponding to the impact of the events on sales (as per claims 6, 25, 44, 63, and 82), and (5) as per claim 1, Landvater lacks two out of three of open to buy, markdown management, or bottom-up planning reports.

In response to argument (1), Examiner respectfully disagrees. Since a causal calendar is a schedule of events involving or constituting the producer of an effect, result, or consequence in its broadest reasonable interpretation, Examiner asserts that Landvater does teach a causal calendar when discussing the schedule of replenishment shipments based on time-phased and scheduled product sales forecasts. The schedule involving shipments and replenishments is directly correlated to events like shelf configuration changes, sales, etc. See column 8, lines 25-40, column 14, lines 35-column 15, line 4, column 17, lines 35-60, column 19, lines 5-17, column 21, lines 15-25.

In response to argument (2), Examiner respectfully disagrees. Applicant has defined Open-to-Buy (OTB) management on page 9 of the originally presented specification as predicting future inventory levels based on the current inventory, expected sales, etc., and

comparing the future inventory levels to budget levels. Landvater discloses predicting the inventory for the future based on expected future sales and the financial budgets set forth by the financial planning system. See specifically column 20, lines 30-50, which discusses using a financial planning system to project future sales estimates and compare these estimates to budgets and financial data. The projected financial plan reveals the projected gross margins and projected inventory investment, and allows for the determination of replenishment shipments.

In response to argument (3), Examiner respectfully disagrees. Landvater discusses specifying in the system specifics of products at specific locations. See column 5, lines 1-5, column 8, lines 5-25, column 11, lines 20-32, column 15, lines 25-45 and 55-65, column 17, lines 35-57, column 19, lines 5-17, wherein goods are grouped and projected across the retailers while also considering events, such as promotions, displays, etc. at those locations.

In response to argument (4), Examiner respectfully disagrees. Landvater teaches wherein the attributes of the causal calendar further includes a factor corresponding to the impact of the event on sales. See at least column 12, lines 25-30, and column 17, lines 5-55, wherein the event is a promotion, a shelf reconfiguration, a seasonality or holiday, etc. and the features of these invents (increased or decreased sales volumes, etc.) are considered when producing forecasts. Examiner points out that the term “factor” in the claims is very broad and could be either an element contributing to the result (i.e. subjective) or a mathematical quantity (objective). Therefore, if something specific is meant by the term factor, it should be recited in the claims to receive proper patentable weight.

In response to argument (5), Examiner respectfully disagrees. First, Landvater open to buy (OTB) as discussed in argument (2) above. Second, Landvater does teach and suggest

bottom-up planning reports. The specification on page 8 defines bottom-up planning as providing good level plans for the future, calculating the future selling rate for a good and using the rate to calculate future good plans. See column 8, lines 11-35, column 10, lines 20-30, column 11, lines 5-25, column 13, lines 30-40, column 21, lines 15-35, wherein Landvater discusses bottom-up planning by providing sales, inventory, and receipt information on a daily or weekly basis. On a per good basis, Landvater teaches studying past sales and the associated sell rate to determine future predictions of needed inventory. Since Landvater teaches both OTB and bottom-up planning, Landvater meets the limitations of claims 1.

3. Applicant's arguments, see pages 13-14 of the response filed 07/27/2005, with respect to markdowns, discounts, and markdown management reports under 35 USC § 102(e) have been fully considered and are persuasive. Therefore, the 35 USC § 102(e) rejections of claims 39-57 have been withdrawn. However, upon further consideration, new grounds of rejection have been set forth below under 35 USC § 103, as set forth below.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-38 and 58-95 are rejected under 35 U.S.C. 102(e) as being anticipated by Landvater (U.S. 6,609,101).

6. As per claim 1, Landvater teaches an improved management decision support system, including a computer system having memory and resources, a retail demand forecasting program applying one or more forecasting approaches, running on the computer system and generating output, and a set of analysis programs, running on the computer system and utilizing the output, said analysis programs generating at least one of (a) order of goods from a supplier-related data (b) allocation of the goods to be shipped by the supplier-related data, or (c) distribution of goods to selling locations-related data, the improvement comprising:

a causal calendar utilized by the forecasting program to generate the output, said causal calendar including for a plurality of events attributes of a good identifier, a selling location identifier, the event start date, the event stop date, and the event type (See figures 14, 15, 18, and 22, column 6, lines 45-60, column 8, lines 7-21 and 25-40, column 14, lines 25-67, column 15, lines 10-25, column 17, lines 35-57, column 19, lines 5-17, and column 21, lines 15-25, column 23, lines 45-65, wherein a calendar is used with the forecasting program to determine stock and replenishment for each of the retail locations); and

one or more additional analysis programs in the set of analysis programs generating data reported in at least two of: open to buy reports, markdown management reports, bottom-up planning reports (See figure 2 and column 20, lines 30-50, which discusses OTB management by considering the financials and inventory budget. See figures 5 and 9, column 8, lines 11-35, column 10, lines 20-30, column 11, lines 5-25, column 13, lines 30-40, column 19, lines 29-45, column 21, lines 15-35, which discuss bottom-up planning by providing sales, inventory, and receipt information on a daily or weekly basis).

7. As per claim 2, Landvater teaches wherein a pair of the good identifier and event identifier attributes associate a single good at a single selling location with one of the plurality of events (See figures 10, 16-17, and 19-21, column 11, line 53-column 12, line 40, and column 17, lines 5-55, which discusses a good and an event, such as promotions, holidays, displays, etc.).

8. As per claim 3, Landvater wherein a pair of the good identifier and event identifier attributes associate a single good at a group of selling locations with one of the plurality of events (See column 8, lines 5-25, column 11, lines 20-32, column 17, lines 35-57, column 19, lines 5-17, which discuss individual goods at multiple selling locations, and overriding occurs. Specifically, when an event works better at one location than another, inventory is balanced).

9. As per claim 4, Landvater teaches wherein a pair of the good identifier and event identifier attributes associate a group of goods at a single selling location with one of the plurality of events (See column 5, lines 1-5, column 8, lines 5-25, column 11, lines 20-32, column 15, lines 25-45 and 55-65, column 17, lines 35-57, column 19, lines 5-17, wherein goods are grouped and projected across the retailers while also considering events, such as promotions, displays, etc.).

10. As per claim 5, Landvater discloses wherein a pair of the good identifier and event identifier attributes associate a group of goods at a group of selling locations with one of the plurality of events (See column 5, lines 1-5, column 8, lines 5-25, column 11, lines 20-32, column 15, lines 25-45 and 55-65, column 23, lines 45-65, which discusses group products and events such as displays).

11. As per claim 6, Landvater teaches wherein the attributes of the causal calendar further includes a factor corresponding to the impact of the event on sales (See column 12, lines 25-30,

and column 17, lines 5-55, which discusses taking promotions and sales into consideration sales when producing forecasts).

12. As per claims 7-9, Landvater teaches wherein the set of analysis programs is adapted to basic retail goods, to seasonal retail goods, and to fashion retail goods (See column 10, lines 30-45, column 12, lines 9-40, column 15, lines 25-50, and column 19, lines 5-20, wherein the program considers basic goods, retail goods, and seasonal goods of retailers).

13. As per claim 10, Landvater teaches wherein the set of analysis programs operate on daily or more frequent period forecasts (See figure 8, column 10, lines 20-50, column 13, lines 30-36 and 49-58, which discusses daily forecasts).

14. As per claim 11, Landvater teaches wherein the set of analysis programs operate on weekly forecasts (See figure 8, column 10, lines 20-50, column 11, lines 1-25, and column 21, lines 15-35, which discuss weekly forecasts).

15. As per claim 12, Landvater teaches wherein the set of analysis programs operate on pairings of individual goods in individual selling locations (See column 8, lines 5-25, column 11, lines 20-32, column 17, lines 35-57, column 19, lines 5-17, column 23, lines 45-65, which discuss goods at individual locations).

16. As per claim 13, Landvater teaches wherein the set of analysis programs operate on groups of goods in individual selling locations (See column 5, lines 1-5, column 8, lines 5-25, column 11, lines 20-32, column 15, lines 25-45 and 55-65, column 23, lines 45-65, which discuss groups of goods).

17. As per claim 14, Landvater teaches wherein the set of analysis programs operate on individual goods in groups of selling locations (See column 8, lines 5-25, column 11, lines 20-

32, column 17, lines 35-57, column 19, lines 5-17, which discuss individual goods at multiple selling locations, and overriding occurs).

18. As per claim 15, Landvater teaches wherein the set of analysis programs operate on groups of goods in groups of selling locations (See column 5, lines 1-5, column 8, lines 5-25, column 11, lines 20-32, column 15, lines 25-45 and 55-65, column 17, lines 35-57, column 19, lines 5-17, wherein goods are grouped and projected across the retailers).

19. As per claim 16, Landvater teaches wherein the reports are displayed on a monitor in communication with the computer system (See figures 4 and 22, column 7, lines 35-50, column 21, lines 15-35, which discusses a monitor in connection with the system).

20. As per claim 17, Landvater teaches wherein the reports are saved in spreadsheet file format (See column 21, lines 15-40, which teaches spreadsheets).

21. As per claim 18, Landvater discloses wherein the reports are printed on paper, microfiche, or optical media (See column 7, lines 35-50, wherein the reports are placed on optical media).

22. As per claim 19, Landvater teaches wherein the reports are distributed by e-mail or other messaging facility (See figure 3, column 7, line 50-column 85 and 25-45, column 21, lines 15-34 and 41-50, column 22, lines 30-55, wherein the forecasting and other reports are transmitted in a client server environment).

23. Claims 20-38 recite equivalent limitations to claims 1-19, respectively, and are therefore rejected using the same art and rationale set forth above.

24. Claims 58-76 recite equivalent limitations to claims 1-19, respectively, and are therefore rejected using the same art and rationale set forth above.

25. Claims 77-95 recite equivalent limitations to claims 1-19, respectively, and are therefore rejected using the same art and rationale set forth above.

***Claim Rejections - 35 USC § 103***

26. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 39-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landvater (U.S. 6,609,101).

27. Claim 39 recites similar limitations to claim 1 above and is therefore rejected using the same art and rationale set forth above. Landvater further teaches an additional analysis program in the set of analysis programs generating data reported in a promotions management report (See column 3, lines 8-25, column 12, lines 25-30, column 17, lines 5-55, column 18, lines 3-30, which discusses management of sales by taking promotions and sales into consideration when producing forecasts). However, Landvater does not expressly disclose that these promotions are markdowns.

Landvater discloses a forecasting and replenishment system that manages inventory and finances of this inventory. The system projects sales and replenishment shipments for products and groups of products using stored data concerning past sales of the product and the consideration of promotions. It is old and well-known in retail that a promotions would include markdowns and discounts in order to increase sale of a product and penetrate the market with the

product. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include markdowns in the promotions management of Landvater in order to more efficiently and accurately determine the inventory levels needed to meet the demand during the promotion by fully considering the impact of such a promotion. See at least column 12, lines 25-30, column 17, lines 1-20.

28. Claims 40-57 recite equivalent limitations to claims 2-19, respectively, and are therefore rejected using the same art and rationale set forth above.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Lee et al. (U.S. 5,712,985) discloses forecasting demand using factors such as promotional events (sales and discounts), holidays, etc.

Kellond et al. (U.S. 2003/0061081) discloses supply chain management with up-to-buy and bottom-up models.

Dick et al. (U.S. 2002/0128890) discloses supply chain management with up-to-buy and bottom-up models.

Dick et al. (U.S. 2002/0120459) discloses supply chain management with up-to-buy and bottom-up models.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is (571) 272-6737. The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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bvd

October 3, 2005



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